CHAPTER 50-10.2
RIGHTS OF HEALTH CARE FACILITY RESIDENTS

50-10.2-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Authorized electronic monitoring" means the placement and use of an authorized electronic monitoring device, by a resident or resident representative, in the resident's room.
2. "Authorized electronic monitoring device" means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which are designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.
3. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that individual's immediate family.
4. "Department" means the department of human services.
5. "Facility" means a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.
6. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
7. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
   a. Prevent the facility staff from providing customary and required care; or
   b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of remodeling workers.
8. "Resident" means an individual residing in a facility.
9. "Resident representative" means a person authorized to act as a resident's agent under power of attorney for health care or guardianship.

50-10.2-02. Residents' rights - Implementation.

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and thereafter annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct. Facilities shall treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:
   a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
   b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
   c. The right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each resident and, if the

resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.

d. The right to send and receive unopened personal mail and the right of access to and use of telephones for private conversations.

e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.

f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with an explanation by the facility to the resident or the person legally responsible for the resident.

g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services, including ancillary charges. Residents, or their legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance payment or gratuity to assure admission.

h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.

i. The right to have privacy in treatment and in caring for personal needs, to use personal belongings, to have security in storing and using personal possessions, and to have confidentiality in the treatment of personal and medical records. The resident has the right to view, and authorize release of, any personal or medical records.

j. The right to be treated courteously, fairly, and with the fullest measure of dignity.

k. The right to be free from mental and physical abuse and the right to be free from physical or chemical restraint except in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized and documented by a physician for a limited period of time and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.

l. The right not to be transferred or discharged except for:
   (1) Medical reasons;
   (2) The resident's welfare or that of other residents;
   (3) Nonpayment of one's rent or fees; or
   (4) A temporary transfer during times of remodeling.

m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care.
o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.
p. The right to have each facility display a notice that the following information is available for public review and make the information available on request:
   (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous two years.
   (2) The facility's grievance process.
   (3) A copy of the statement of ownership, board membership, and partners.
   (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
q. The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility.
r. The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
s. The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
t. The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.

2. Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility.
3. Each facility shall prepare a written plan and provide staff training to implement this chapter.
4. The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.

50-10.2-02.1. Authorized electronic monitoring - Penalty.

1. A facility shall permit a resident or the resident representative to conduct authorized electronic monitoring of the resident's room through an authorized electronic monitoring device if:
   a. The authorized electronic monitoring device is placed in the resident's room;
   b. The electronic monitoring device is placed in a fixed, stationary position; monitors only the area occupied by the resident and not the area occupied by the resident's roommate; and protects the privacy and dignity of the resident;
   c. The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility provides to the resident;
   d. A video tape or recording created using an authorized electronic monitoring device records the date and time;
   e. All costs, except for electricity, associated with the authorized electronic monitoring device, including installation, operation, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use of the authorized electronic monitoring device; and
   f. A signed authorization for the disclosure of protected health information, as defined by title 45, Code of Federal Regulations, part 160, section 103, compliant with the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of the device is given by each resident occupying the same room, or by that resident's resident representative in accordance with subsection 4.
2. A facility that uses an authorized electronic monitoring device in compliance with this chapter is not guilty of a crime or civilly liable under this code for a violation of a resident's privacy.

3. The facility shall cooperate to accommodate the placement of the authorized electronic monitoring device, unless doing so would place undue burden on the facility.
4. Before placing and using the authorized electronic monitoring device, a resident or resident representative shall obtain the signed authorization of any other resident residing in the room in accordance with subsection 1. The authorization may be signed by that resident's resident representative.
   a. The resident's or the resident representative's authorization may limit the use of an authorized electronic monitoring device to only audio monitoring or only video monitoring and may limit the device's time of operation, direction, and focus.
   b. At any time, a resident or resident representative who did not request the authorized electronic monitoring device in the resident's room may withdraw, in writing, the signed authorization for the use of the device. The resident who requested the device or the resident's resident representative is responsible for having the device disabled in compliance with the facility's standards and regulations after receipt of the written withdrawal.
5. The facility shall make a reasonable attempt to accommodate a resident if a resident or resident representative of a resident who is residing in a shared room wants to have an authorized electronic monitoring device placed in the room and another resident living in the same shared room refuses to authorize the use of the authorized electronic monitoring device.
6. If authorized electronic monitoring is being conducted in the room of a resident, and another resident will be moved into the room, the resident who requested the device or the resident's resident representative is responsible for having the existing authorized electronic monitoring device disabled in compliance with the facility's standards and regulations unless the new resident or the resident's resident representative authorizes the device pursuant to subsections 1 and 4.
7. A facility may not refuse to admit an individual and may not remove a resident from a facility because of authorized electronic monitoring of a resident's room. A person may not intentionally retaliate or discriminate against a resident for authorization of authorized electronic monitoring.
8. A facility clearly and conspicuously shall post a sign where authorized electronic monitoring is being conducted to alert and inform visitors.
9. A facility or staff of the facility may not access any video or audio recording created through an authorized electronic monitoring device placed in a resident's room without the written consent of the resident or resident representative or court order.
10. A person that intentionally hampers, obstructs, tampers with, or destroys a recording or an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or resident representative, is subject to a class B misdemeanor. A person that places an electronic monitoring device in the room of a resident or which uses or discloses a tape or other recording made by the device may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of another. In any civil proceeding, administrative proceeding, or survey process, material obtained through the use of an authorized electronic monitoring device may not be used if a person intentionally hampered, obstructed, or tampered with the material without the express written consent of the resident or resident representative, or if the material was obtained through the operation of an electronic monitoring device which was not compliant with this section.
11. A person may not intercept a communication or disclose or use an intercepted communication of an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or the resident representative.

50-10.2-03. Rulemaking authority of department.

The department may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this chapter through the ombudsman program under chapter 50-10.1.

50-10.2-04. Enforcement - Injunction.

Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

50-10.2-05. Furnishing financial information.

A facility may request that an applicant for admission, a resident of the facility, or the applicant's or resident's legal representative furnish financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. A facility may deny admission to an applicant for admission who is unable to verify a viable payment source.